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IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

No. 384

PUBLISHERS' ASSOCIATION OF NEW YORK CITY (on behalf of its member, THE NEW YORK TIMES COMPANY), *Petitioner*,

v.

NEW YORK MAILERS' UNION NUMBER SIX, *Respondent*.

RESPONDENT'S SUGGESTION OF MOOTNESS

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New York 17, New York

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The sole question presented by the petition for certiorari in this case, which this Court granted on November 12, 1963, is whether Section 7 of the Norris-LaGuardia Act applies to an order of the District Court staying certain internal union proceedings pending arbitration compelled by the Court. The sole relief which petitioner seeks from this Court is a judgment staying proceedings within respondent union against one of its members on a charge brought by another member. As is shown by the materials reprinted as Appendix hereto, the originals of which have been filed with the Clerk of this Court, "that charge has now

been withdrawn with prejudice" and the union proceedings have been "finally terminated with prejudice". Petitioners have therefore obtained the full relief sought in this Court and the cause is clearly moot. *Taylor* v. *McElroy*, 360 U.S. 709, 711. However, since we are advised that petitioner will contend that the case is not moot, we shall state the reasons underlying this Suggestion in detail.

A. This case grows out of charges by James Kelly, a member of respondent union against another member, Everett Rowan, who was also foreman at the New York Times, which is a member of petitioner Publishers' Association. Following appropriate and established preliminary procedures, the union summoned Rowan to a hearing for the limited purpose of investigating the charge. (R. 15).*

In the meantime, on August 31, the employer had submitted a grievance in writing (R. 16) protesting against union's "notification * * * to * * * Rowan * * * of the charges filed against him." Calling attention to the contract's prohibition of union discipline against a foreman-member, and asserting that the charge "relate to the execution of Mr. Rowan's supervisory duties" the employer claimed a contract violation in the mere notice of charge and demanded its retraction, on pain of pressing the grievance to arbitration, and meanwhile "that no further action be taken by the Union to hear charges against, or to discipline this foreman". The union rejected this grievance.

Petitioner then brought this suit in the United States District Court for the Southern District of New

* "R." refers to the Transcript of Record in this Court.

York and sought two forms of relief: (1) an order directing defendant to arbitrate the grievance, and (2) an order directing that the union be restrained from proceeding further with the proposed hearing of charges against said foreman Everett Rowan *pending the determination of the arbitration.* (R. 10). On November 20, 1962 the District Court (Murphy, J.) granted the full relief prayed (R. 2-3).

The union thereupon appealed to the Court of Appeals. On May 20, 1963 that Court entered a judgment (1) affirming that part of the District Court's order which compelled arbitration and (2) reversing that part of the District Court's order which stayed the union's action on the Kelly charge pending arbitration. The union did not seek further review of the order compelling arbitration. But the Publishers' Association petitioned for certiorari to review such part of the Court of Appeals' order as was adverse to it, namely, that part of the order reversing the stay which the District Court had granted. On November 12, 1963 this Court granted certiorari, 375 U.S. 901 (R. 56).

On February 4, 1964 James Kelly, the member who had brought the charge, unequivocably withdrew it in a letter to respondent's President Laura which is reprinted in the Appendix hereto. Thereupon, President Laura executed an affidavit (also reprinted in the Appendix) that Laura "as duly authorized President, [has] notified member Rowan of such withdrawal of the Kelly charge, and [has] dissolved the investigating committee appointed by [him] under the Constitution and By-laws on September 9, 1962 to investigate said charges; and [he] thereupon caused such and all further proceedings to be finally terminated with pre-ju-

dice." The affidavit continues: "Member Kelly having assured the Union that he will initiate no further proceedings against member Rowan in connection with or growing out of the alleged incidents of August 12, 1962, and that he will make no grievance thereon under the collective bargaining agreement, the Union will entertain and take no further proceedings of any kind whatever against member Rowan or the publisher in behalf of member Kelly in that connection."

B. This is not a case in which the government is seeking an injunctive order whose effect would be to prevent unlawful practices in the future. *Labor Board* v. *Mexica Textile Mills*, 339 U.S. 563; cf. *United States* v. *W. T. Grant*, 345 U.S. 629, 632. Petitioner has not contended that the processing of the charges against Rowan would have been unlawful or could have been permanently enjoined. To "preserve the status quo pending the arbitration in accordance with the provisions of the contract, and to prevent frustration of its contention that the foreman must not be subjected to Union disciplinary proceedings before that contention could be considered in arbitration, the Association sought and obtained from the District Court a stay of Union proceedings against the foreman until the arbitration". (Cert. Pet., p. 3). Since these charges have now been withdrawn, the arbitration which was ordered by the courts below can now continue without any interference, real or imaginary, which the processing of those charges might have created. There is simply no subject matter in controversy between the parties in this Court. Petitioner "has obtained everything that it could recover in this case by a judgment of this court in its favor. The duty of this court, as of every judicial tribunal, is limited to determining rights

of persons or of property, which are actually controverted in the particular case before it. When, in determining such rights, it becomes necessary to give an opinion upon a question of law, that opinion may have weight as a precedent for future decisions. But the court is not empowered to decide moot questions or abstract propositions, or to declare, for the government of future cases, principles or rules of law which cannot affect the result as to the thing in issue in the case before it." *California* v. *San Pablo & Tulare R. Co.*, 149 U.S. 308, 314.

The sole remaining question therefore is what order would be appropriate. An order could be entered vacating the judgments of both courts below and directing the District Court to enter a new order granting arbitration and dismissing the application for a stay on grounds of mootness. The same result would be achieved, and we think more cleanly, by an order vacating the grant of certiorari and denying certiorari. This is the course followed in *Labor Board* v. *Textile Workers' Union*, 352 U.S. 864. In that case, as this Court subsequently observed, "intervening circumstances . . . at least indicated that the litigation had become less meaningful to the parties . . .". *Labor Board* v. *Insurance Agents*, 361 U.S. 477, 491, n. 16. The "intervening circumstances" here have left the present controversy much less alive than those in *Textile Workers* where there remained, at least in theory, an outstanding Labor Board order of which enforcement was sought. Moreover, even if this Court were empowered to hear moot cases and were to consider this case on the merits, it would be compelled to set aside the District Court's stay of the union proceedings since there is no subject matter on which an in-

junction may operate. Thus the case is no longer a proper vehicle for consideration of the question raised by the petition. Cf. *The Monrosa* v. *Carbon Black Export, Inc.*, 359 U.S. 180; *Rice* v. *Sioux City Memorial Park*, 349 U.S. 70. While this procedure seems to us to be preferable under the circumstances, respondent would have no objection to an order vacating the judgments below.

Respectfully submitted,

SIDNEY SUGERMAN
295 Madison Avenue
New York 17, New York

GERHARD P. VAN ARKEL
GEORGE KAUFMANN
1730 K Street N.W.
Washington 6, D. C.

APPENDIX

February 4, 1964

New York Mailers' Union No. 6
One Beekman Street
New York 38, N. Y.

Att: Mr. Thomas M. Laura, President

Dear President Laura:

This will confirm that I have withdrawn with prejudice my written and sworn charge, dated August 20, 1962, against member Everett Rowan, foreman of The New York Times mailroom, for alleged violation of Article III, Section 1 of the Union Constitution; and I shall not make any further accusation or charge against member Rowan on the basis of the facts presented to you in writing with that charge, connected with or growing out of the incidents of August 12, 1962, as described therein.

Accordingly, I request the Union to cease any further processing of my charge and to terminate all proceedings against member Rowan in connection therewith. Moreover, I shall not make any grievance against member Rowan under the collective bargaining agreement with the Publishers in connection with those incidents.

Fraternally yours,

JAMES KELLY
James Kelly.

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.:

THOMAS M. LAURA, being duly sworn, deposes and says:

That he is the President of New York Mailers' Union No. 6, International Typographical Union, AFL-CIO.

By written confirmation dated February 4, 1964, attached hereto, member James Kelly, having duly withdrawn with prejudice his sworn charge, dated August 20, 1962, against member Everett Rowan, foreman of The New York Times mailroom, for alleged violations of Article III, Section 1 of the Union Constitution, and having requested the Union to drop all further proceedings thereon against member Rowan, I, as duly authorized President, have notified member Rowan of such withdrawal of the Kelly charge, and have dissolved the investigating committee appointed by me under the Constitution and By-Laws on September 9, 1962 to investigate said charges; and I thereupon caused such and all further proceedings to be finally terminated with prejudice.

Member Kelly having assured the Union that he will initiate no further proceedings against member Rowan in connection with or growing out of the alleged incidents of August 12, 1962, and that he will make no grievance thereon under the collective bargaining agreement, the Union will entertain and take no further proceedings of any kind whatever against member Rowan or the publisher in behalf of member Kelly in that connection.

THOMAS M. LAURA
Thomas M. Laura

Sworn to before me this 4th day of February, 1964.

HAROLD L. KRAININ

HAROLD L. KRAININ
Notary Public, State of New York
No. 30-7351150 Qual. in Nassau County
Cert. Filed in New York County
Commission Expires March 30, 1964